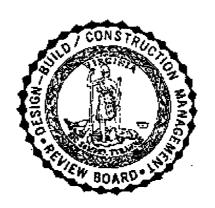
### DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD RULES AND REGULATIONS 1 VAC 17-20-10 et. seq.

ADOPTED By the Review Board June 12, 1997 REVISED By the Review Board June 18, 2001

**EFFECTIVE DATE** September 12, 2001



Commonwealth of Virginia Department of General Services Division of Engineering and Buildings 805 East Broad Street, Room 101 Richmond, Virginia 23219-1989

#### STATEMENT OF PURPOSE

This booklet contains information public bodies other than the Commonwealth will need in order to seek Design-Build/Construction Management Review Board approval to use competitive negotiations for the procurement of a design-build or construction management contract. In addition, prior to a public body's submission of a specific construction project to the Review Board for consideration, the Review Board will review a public body's draft or adopted written procedures, whether ordinances or resolutions, governing the evaluation and award of design-build and construction management contracts. This booklet also contains information to assist public bodies in drafting such ordinances or resolutions.

The law governing the use and procurement of design-build or construction management contracts by public bodies other than the Commonwealth is set forth in Chapters 24 and 43, Title 2.2 of the Code of Virginia (Va. Code §§ 2.2-2404 through 2.2-2406, and § 2.2-4308.) It is duplicated, for the benefit of users of this booklet, in Appendix A.

It is the goal of the Review Board to provide public bodies other than the Commonwealth with the information they need to comply with the Review Board's rules and regulations. If you have a question and cannot find the answer to it in this booklet, please write to:

Design-Build/Construction Management Review Board c/o Commonwealth of Virginia
Department of General Services
Director, Division of Engineering and Buildings
805 East Broad Street, Room 101
Richmond, Virginia 23219-1989

or call the Division of Engineering and Buildings at (804) 786-3263.

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## DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD RULES AND REGULATIONS.

## PART I. DEFINITIONS.

#### 1 VAC 17-20-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless a different meaning is provided or is plainly required by the context:

"Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as an architect.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. "Construction management contract" means a contract in which a person is retained by a public body in connection with a construction project to advise the public body on matters of constructability, cost, and schedule; to assist the public body as an independent resource with technical expertise; to coordinate and administer contracts for construction of the project; and to provide, or be at-risk for, some portion of the construction services for the project. (See Part VI, 1 VAC 17-20-230 et seq.), for a more complete explanation of the construction management contracts covered by this chapter.)

"Construction manager" means a person who enters into a construction management contract with a public body.

"Construction services" means any service which facilitates construction or which is traditionally provided by a contractor as a part of his contract for construction, including, but not by way of limitation, general condition provisions, site safety, and scheduling and coordination of trade contractors.

"Design-build contract" means a contract in which a person is retained by a public body to both design and build the structure, building, highway or other item specified in the contract.

"Design-builder" means a person who enters into a Design-Build contract with a public body.

"Person" means any individual, sole proprietorship, partnership, association, limited liability company, joint venture, corporation or other legal entity.

"Professional Engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision, created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The term public body shall not include the Commonwealth or its departments, agencies, and institutions.

"Request for proposal (RFP)" means the second step of a two-step, competitive negotiation process, in which the public body issues a written request to those persons who have been prequalified by the public body to submit both technical and cost proposals.

"Request for qualifications (RFQ)" means the first step of a two-step, competitive negotiation process, in which the public body publishes a written request for the purpose of inviting interested qualified persons to apply for prequalification.

"Review Board" means the Design-Build/Construction Management Review Board.

## PART II. DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD.

#### 1 VAC 17-20-20. Membership.

The Review Board shall be composed of nine members to be appointed by the Governor as follows: the Director of the Division of Engineering and Buildings of the Department of General Services, or his designee; two Class A general contractors selected from a list recommended by the Associated General Contractors; one Architect and one Professional Engineer selected from a list recommended by the Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects, and the Virginia Society of Professional Engineers; and four representatives of Public Bodies selected from a list recommended by the Virginia Municipal League and the Virginia Association of Counties. Each list shall include the names of at least four persons who are experienced in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The Director of the Division of Engineering and Buildings or his designee shall be a nonvoting member of the Review Board, except in the event of a tie vote of the Review Board.

#### 1 VAC 17-20-30. Terms.

Pursuant to § 2.2-2404 C of the Code of Virginia, appointments shall be for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two (2) successive full terms, except the Director of the Division of Engineering and Buildings, who shall serve until a successor qualifies.

#### 1 VAC 17-20-40. Officers; meetings; quorum.

- A. The Review Board shall elect its chairman and vice-chairman from among its members. Subject to further action by the Review Board, the chairman and vice-chairman shall serve for terms of two years, except that members elected to fill vacancies shall be for the unexpired terms.
- B. The Review Board shall meet at least monthly; however, monthly meetings may be canceled by the chairman if there is no business before the Review Board. Five members shall constitute a quorum.

#### 1 VAC 17-20-50. Administrative support.

Such staff support as is necessary for the conduct of the Review Board's business shall be furnished by the Division of Engineering and Buildings of the Department of General Services pursuant to § 2.2-1134 of the Code of Virginia.

#### 1 VAC 17-20-60. Seal.

The Review Board shall adopt a seal by which it shall authenticate its proceedings.

#### PART III. PROFESSIONAL ADVISOR.

#### 1 VAC 17-20-70. Professional advisor.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract an architect or professional engineer with professional competence appropriate to the project and who shall advise the public body regarding the use of design-build or construction management for that project, and who shall assist the public body with the preparation of the request for proposal and the evaluation of proposals submitted by interested offerors in response to the RFP for that project.

#### 1 VAC 17-20-80. Competency for assignments.

For the purposes set forth in 1 VAC 17-20-70, the Review Board shall consider the following in reviewing for competency of the professional advisor:

- 1. Education, training, and general experience;
- 2. Prior experience with projects of similar size, scope, and complexity; and
- 3. Prior experience with design-build or construction management contracts, as appropriate, or substantially similar experience.

#### PART IV. REQUEST FOR REVIEW.

#### 1 VAC 17-20-90. Methods of construction procurement.

While the competitive sealed bid process remains the preferred method of construction procurement for public bodies, any public body may enter into a contract for construction on a fixed-price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of §§ 2.2-2404 through 2.2-2406 of the Code of Virginia and this chapter and has obtained the approval of the Review Board pursuant to § 2.2-2406 of the Code of Virginia and this chapter.

#### 1 VAC 17-20-100. Request for review of draft or adopted ordinances or resolutions.

- A. Any public body may request a review of its draft or adopted ordinance or resolution by the Review Board to determine if the process proposed or adopted by the public body for the selection, evaluation, and award of a design-build or construction management contract is in compliance with the provisions of § 2.2-4308 A 1 of the Code of Virginia and this chapter.
- B. A request by a public body for review of its draft or adopted ordinance or resolution shall be submitted in writing to the following address:

Design-Build/Construction Management Review Board c/o Commonwealth of Virginia Department of General Services Director, Division of Engineering and Buildings 805 East Broad Street, Room 101 Richmond, Virginia 23219-1989

#### 1 VAC 17-20-110. Review of a specific construction project.

- A. A request by a public body for review of a specific construction project shall be submitted in writing to the address provided in 1 VAC 17-20-100.
- B. The public body shall submit 12 copies of the following with its written request for review of a specific construction project:
  - 1. Evidence that the public body has in its employ or under contract an architect or professional engineer to advise the public body regarding the use of a design-build or construction management contract, and to assist the public body with the preparation of the request for proposal and the evaluation of proposals submitted by interested offerors in response to the RFP for the project (see 1 VAC 17-20-70 and 1 VAC 17-20-80);
  - 2. A certified copy of the ordinance or resolution adopting the public body's written procedures governing the selection, evaluation, and award of design-build and construction management contracts. If the ordinance or resolution has been previously submitted to and approved by the Review Board (see 1 VAC 17-20-100), a copy of the Review Board's letter of approval;
  - 3. If not a part of the adopted ordinance or resolution, a certified copy of the public body's written procedures governing the selection, evaluation, and award of design-build and construction management contracts. If the written procedures have been previously submitted to and approved by the Review Board (see 1 VAC 17-20-100), a copy of the Review Board's letter of approval.
  - 4. The public body's findings as to the specific construction project under consideration, that (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous. The findings shall include the information and data upon which the findings are based. Such information and data shall, at a minimum, include estimates for cost and time using the traditional design-bid-build procedures, as compared with the proposed design-build or construction management procedures (see Appendix C); and
  - 5. A written narrative describing the criteria of the specific construction project under consideration in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications. (For a checklist of required submittals see Appendix B.)

#### 1 VAC 17-20-120. Review period.

Within 60 days of the receipt of the request for review, the Review Board shall render a decision, unless a different timetable is agreed to by the public body. If the Review Board determines that the public body has complied with the provisions of § 2.2-4308\_of the Code of Virginia and this chapter, and the findings made by the public body pursuant to § 2.2-4308 A 2 of the Code of Virginia and 1 VAC 17-20-110 B are not unreasonable, the Review Board shall approve the use of a design-build or construction management contract, as appropriate, by the public body for the specific construction project under consideration. However, if the Review Board determines that (i) the public body has not complied with the provisions of § 2.2-4308 of the Code of Virginia or this chapter or (ii) the findings made by the public body pursuant to § 2.2-4308 A 2 of the Code of Virginia are unreasonable, the Review Board shall disapprove such use, and the public body shall not use a design-build or construction management contract to procure construction for the proposed project. If no decision is made by the Review Board within the 60 day period or as otherwise agreed to by the public body, the proposed use of a design-build or construction management contract for the specific construction project shall be deemed approved.

#### 1 VAC 17-20-130. Extensions of review period.

- A. Pursuant to § 2.2-2406 of the Code of Virginia, the Review Board or its designee and the public body may agree to an alternative review period. An alternative review period may be established by agreement between the Review Board and the public body if (i) the Review Board will be unable to act upon the public body's written request for review of a specific construction project within 60 days from the date of receipt of the public body's written request, (ii) the public body requires additional time to assimilate and submit any additional information required by the Review Board pursuant to 1 VAC 17-20-140, (iii) additional time is required for the scheduling of the public body's appearance before the Review Board, or (iv) any other mutually acceptable cause or reason.
- B. In no event shall any alternative review period require a decision by the Review Board in less than 60 days from the date of receipt of the public body's written request for review.

## 1 VAC 17-20-140. Request for additional documents or information; presentations before the Review Board.

If, upon review of the documents and information submitted by the public body in support of its request for authorization to use a design-build or construction management contract for a specific construction project, including, without limitation, the documentation required by 1 VAC 17-20-110 B, the Review Board concludes that additional information is required to enable the Review Board to determine whether the public body has complied with the provisions of § 2.2-4308 of the Code of Virginia and this chapter, the Review Board may require the submission of additional documents or information by the public body, in a form prescribed by the Review Board. In addition to, or in lieu of, the submission of additional information, the Review Board may require the public body to appear before the Review Board in support of its request.

#### 1 VAC 17-20-150. Request for reconsideration of previously disapproved project.

A request by a public body for reconsideration by the Review Board of a previously disapproved request for authorization to use a design-build or construction management contract for a specific construction project may not be submitted to the Review Board for a period of six months from the date of disapproval.

#### 1 VAC 17-20-160. Appeal of Review Board action.

Any public body which has been aggrieved by any action of the Review Board shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, (§ 2.2-4000 et seq. of the Code of Virginia).

## PART V. SELECTION, EVALUATION, AND AWARD OF DESIGN-BUILD CONTRACTS.

#### 1 VAC 17-20-170. Adoption of procedures.

Prior to issuing a request for qualification for any design-build contract for a specific construction project, the public body shall have adopted, by ordinance or resolution, written procedures governing the selection, evaluation, and award of design-build contracts. Such procedures shall be consistent with those described in § 2.2-4301 of the Code of Virginia for the procurement of nonprofessional services through competitive negotiation and this Part V. Such procedures shall also require requests for proposals to include and define the criteria of such construction projects in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. At a minimum, such procedures shall include:

- 1. Procedures for the development and preparation of the request for qualifications (RFQ) and the request for proposal (RFP);
- 2. Procedures for the preparation and submittal of qualifications by potential offerors in response to the RFQ and technical and cost proposals by prequalified offerors in response to the RFP;
- 3. Procedures for evaluating the qualifications of potential offerors and technical and cost proposals from prequalified offerors;
- 4. Procedures for negotiations between the public body and prequalified offerors prior to the submittal of best and final offers. Such procedures shall contain safeguards to preserve confidential and proprietary information supplied by those submitting proposals pursuant to § 2.2-4342 F of the Code of Virginia; and
- 5. Procedures for the award and execution of design-build contracts.

#### 1 VAC 17-20-180. Evaluation committee.

- A. The public body shall appoint an evaluation committee of not less than three voting members.
- B. If an employee of the public body, the professional advisor (see 1 VAC 17-20-70 and 1 VAC 17-20-80) shall be a voting member of the evaluation committee; if not an employee of the public body, the professional advisor may be a voting or non-voting member of the evaluation committee as permitted by the public body's internal procurement policies and procedures.

#### 1 VAC 17-20-190. Request for qualifications.

The public body shall publish notice of its request for qualifications (RFQ) from potential offerors at least 10 days prior to the date set for receipt of qualifications by posting in a public area normally used for posting of public notices and in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit qualifications in response to the particular request. In addition, qualifications may be solicited directly from potential offerors. The RFQ shall indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the potential offeror's qualifications, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror. The RFQ shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The public body shall establish procedures whereby comments concerning specifications or other provisions in the RFQ can be received and considered prior to the time set for receipt of qualifications.

#### 1 VAC 17-20-200. Selection of qualified offerors (Step I); prequalification.

The evaluation committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information, and shall select a minimum of two offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the RFQ. An offeror may be denied prequalification only upon those grounds specified in § 2.2-4317 of the Code of Virginia. At least 30 days prior to the date established for the submission of qualifications, the public body shall advise in writing each offeror, which sought prequalification whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

#### 1 VAC 17-20-210. Request for proposal.

- A. The public body shall prepare a request for proposal (RFP) which shall include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications. The RFP may also define such other requirements as the public body determines appropriate for that particular construction project. In addition, the RFP shall define the criteria to be used by the evaluation committee to evaluate each proposal. The public body shall establish procedures whereby comments concerning specifications or other provisions in the RFP can be received and considered prior to the time set for receipt of proposals.
- B. At least ten (10) days prior to the date set for receipt of proposals, the public body shall invite those potential offerors selected under 1 VAC 17-20-200, to submit sealed technical and cost proposals. An offeror's cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the public body and kept sealed until evaluation of all technical proposals is completed.

#### 1 VAC 17-20-220. Selection of design-builder (Step II).

- A. The evaluation committee shall evaluate each of the technical proposals based on the criteria set forth in the RFP. As a part of the evaluation process, the evaluation committee shall grant each of the offerors an equal opportunity for direct and private communication with the evaluation committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with offerors, the evaluation committee shall exercise care to discuss the same owner information with all offerors. In addition, the evaluation committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to § 2.2-4342 F of the Code of Virginia.
- B. Based upon its review of each offeror's technical proposal, the evaluation committee shall determine whether any changes to the RFP should be made to clarify errors, omissions or ambiguities in the RFP or to incorporate project improvements or additional details, or both, identified by the evaluation committee during its review. If such changes are required, an addendum shall be provided to each offeror.
- C. Based on any revisions to the technical proposals, the evaluation committee and an offeror may negotiate additive and/or deductive modifications to the offeror's cost proposal. In addition, an offeror may submit sealed additive and/or deductive modifications to its original sealed cost proposal, which are not based upon revisions to the technical proposals.

- D. At the conclusion of this process, the evaluation committee shall publicly open, read aloud, and tabulate the cost proposals. The evaluation committee shall add to or deduct from the appropriate cost proposal any cost adjustments contained in amendments submitted by an offeror.
- E. The evaluation committee shall make its recommendation on the selection of the design-builder to the public body based on its evaluation and negotiations. Unless otherwise specified in the RFP, award of the design-build contract shall be made to the offeror, which submits an acceptable technical proposal at the lowest cost.

# PART VI. SELECTION, EVALUATION, AND AWARD OF CONSTRUCTION MANAGEMENT CONTRACTS

#### 1 VAC 17-20-230. Construction management contracts requiring Review Board approval.

- A. In order to require approval under § 2.2-2404 through 2.2-2406 of the Code of Virginia and this chapter, the construction management contract must:
  - 1. Include provisions under which the construction manager provides, or is at-risk for, all or a portion of the construction services provided;
  - 2. Include provisions under which the construction manager is at-risk for a lump sum price or guaranteed maximum price (GMP); or
  - 3. Include provisions under which the construction manager provides any portion of the construction services. (See 1 VAC 17-20-300 for limitation as to the percentage of construction services the construction manager may provide with its own forces.)
- B. If the above provisions are included in any contract, which the public body seeks to procure through competitive negotiations, Review Board approval is required. The title "construction manager" or "construction management contract" is not determinative. If none of the above provisions are included in any such contract, competitive negotiation is permitted under § 2.2-4301 of the Code of Virginia ("Procurement of other than professional services") and Review Board approval is not required.

#### 1 VAC 17-20-240. Adoption of procedures.

Prior to issuing a request for qualifications for any construction management contract for a specific construction project, the public body shall have adopted, by ordinance or resolution, written procedures governing the selection, evaluation, and award of construction management contracts. Such procedures shall be consistent with those described in § 2.2-4301 of the Code of Virginia for the procurement of nonprofessional services through competitive negotiation and this Part VI. Such procedures shall also require requests for proposals to include and define the criteria of such construction projects in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body

determines appropriate for that particular construction project. At a minimum, such procedures shall include:

- 1. Procedures for the development and preparation of the request for qualifications (RFQ) and the request for proposal (RFP);
- 2. Procedures for the preparation and submittal of qualifications by potential offerors in response to the RFQ and technical and cost proposals by prequalified offerors in response to the RFP;
- 3. Procedures for evaluating the qualifications of potential offerors and technical and cost proposals from prequalified offerors;
- 4. Procedures for negotiations between the public body and prequalified offerors prior to the submittal of best and final offers. Such procedures shall contain safeguards to preserve confidential and proprietary information supplied by those submitting proposals pursuant to § 2.2-4342 F of the Code of Virginia; and
- 5. Procedures for the award and execution of construction management contracts.

#### 1 VAC 17-20-250. Evaluation committee.

- A. The public body shall appoint an evaluation committee of not less than three voting members.
- B. If an employee of the public body, the professional advisor (see 1 VAC 17-20-70 and 1 VAC 17-20-80) shall be a voting member of the evaluation committee; if not an employee of the public body, the professional advisor may be a voting or non-voting member of the evaluation committee as permitted by the public body's internal procurement policies and procedures.

#### 1 VAC 17-20-260. Request for qualifications.

The public body shall publish notice of its request for qualifications (RFQ) from potential offerors at least 10 days prior to the date set for receipt of qualifications by posting in a public area normally used for posting of public notices and in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit qualifications in response to the particular request. In addition, qualifications may be solicited directly from potential offerors. The RFQ shall indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the potential offeror's qualifications, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror. The RFQ shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The public body shall establish procedures whereby comments concerning specifications or other provisions in the RFQ can be received and considered prior to the time set for receipt of qualifications.

#### 1 VAC 17-20-270. Selection of qualified offerors (Step I); prequalification.

The evaluation committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information, and shall select a minimum of two (2) offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the RFQ. An offeror may be denied prequalification only upon those grounds specified in § 2.2-4317 of the Code of Virginia. At least 30 days prior to the date established for the submission of qualifications, the public body shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

#### 1 VAC 17-20-280. Request for proposal.

- A. The public body shall prepare a request for proposal (RFP) which shall include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications. The RFP may also define such other requirements as the public body determines appropriate for that particular construction project. The RFP shall define the pre-design, design phase, bid phase, and/or construction phase services to be provided by the construction manager. In addition, the RFP shall provide the criteria to be used by the evaluation committee to evaluate each proposal. The public body shall establish procedures whereby comments concerning specifications or other provisions in the RFP can be received and considered prior to the time set for receipt of proposals.
- B. At least 10 days prior to the date set for the receipt of proposals, the public body shall invite those potential offerors selected under 1 VAC 17-20-270 to submit sealed technical and cost proposals. An offeror's cost proposal shall be sealed separately from its technical proposal and shall include the offeror's lump sum price for all requested pre-construction phase services. A lump sum price or GMP shall be established for all requested construction services as hereinafter described. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the public body and kept sealed until evaluation of all technical proposals is completed

#### 1 VAC 17-20-290. Selection of construction manager (Step II).

A. The evaluation committee shall evaluate each of the technical proposals based on the criteria set forth in the RFP. As a part of the evaluation process, the evaluation committee shall grant each of the offerors an equal opportunity for direct and private communication with the evaluation committee; each offeror shall be allotted the same fixed amount of time. In its conversations with offerors, the evaluation committee shall exercise care to discuss the same owner information with all offerors. In addition, the evaluation committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to § 2.2-4342 F of the Code of Virginia.

- B. Based upon its review of each offeror's technical proposal, the evaluation committee shall determine whether any changes to the RFP should be made to clarify errors, omissions, or ambiguities in the RFP, or to incorporate project improvements or additional details, or both, identified by the evaluation committee during its review. If such changes are required, an addendum shall be provided to each offeror.
- C. Based on any revisions to the technical proposals, the evaluation committee shall conduct negotiations with each offeror. Price shall be considered but need not be the sole determining factor. After negotiations have been conducted with each offeror, the evaluation committee shall make its recommendation on the selection of the construction manager to the public body based on its evaluation and negotiations.
- D. The public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other offerors under consideration, a contract may be negotiated and awarded to that offeror.

#### 1 VAC 17-20-300. Contract provisions.

For any GMP construction management contract, such procedures shall require the inclusion of contract terms providing that (1) not more than 10% of the construction work (measured by cost of the work) shall be performed by the Construction Manager with its own forces and (2) that the remaining 90% of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiations.

#### PART VII.

#### PROJECT EVALUATION (INCLUDING DELAYED OR ABANDONED PROJECTS).

#### 1 VAC 17-20-310. Evaluation of projects and contracts.

The Review Board shall evaluate construction projects procured by design-build or construction management contracts entered into by public bodies, including cost and time savings; effectiveness of the selection, evaluation, and award of such contracts; and the benefit to the public body. In addition, the Review Board shall report to the General Assembly and the Governor on or before December 1, 1999, and again on or before December 31, 2002, concerning the Review Board's evaluation of and findings regarding all design-build and construction management construction contracts undertaken by public bodies, and any recommendations relating to future use of design-build or construction management contracts by such public bodies. The provisions of this Part VII apply to any design-build or Construction Management contract entered into by a public body on or after July 1, 1996.

#### 1 VAC 17-20-320. Documents and information to be submitted.

A. Public bodies shall provide information as requested by the Review Board to allow project evaluation by the Review Board.

- B. Within 30 days after the execution of a design-build or construction management contract, the public body shall submit three copies of the following documents and information to the Review Board:
  - 1. Request for qualifications (RFO);
  - 2. Request for proposal (RFP), including all addenda;
  - 3. Identification of all offerors responding to the RFP, including each offeror's cost proposal; and
  - 4. The form of agreement and terms and conditions of the contract between the public body and the design-builder or construction manager, as appropriate.
- C. The public body shall submit such information at such intervals as specified by the Review Board on a form or forms provided by the Review Board. (See Appendix C.)
- D. Within 90 consecutive calendar days after Substantial Completion, or, in the event of ongoing claims or disputes, within 90 consecutive calendar days after project close-out, of a design-build or construction management project, the public body shall submit three copies of the following documents and information to the Review Board:
  - 1. A summary of any change orders, whether for a change in the scope of work, contract price, and/or time of performance, including a brief description of the changes to the original scope of work and the causes for such changes.
  - 2. A comparison of estimated project cost under the traditional design-bid-build procedures and the total project cost (including, without limitation, all design or management fees, as appropriate) under the design-build or Construction Management procedures, as appropriate, as presented to the Review Board. (See Appendix C.)
  - 3. A comparison of the time estimated for substantial completion of the project under the traditional design-bid-build procedures and the time required for substantial completion of the project under the design-build or construction management procedures, as appropriate, as presented to the Review Board. (See Appendix C.)
  - 4. An analysis of the selection, evaluation, and award procedures employed by the public body for the selection of the design-builder or construction manager, as appropriate.
  - 5. An evaluation of the public body's written findings that (i) a design-build or construction management contract would be more advantageous than a competitive sealed bid construction contract; (ii) there would be a benefit to the public body by using a design-build or Construction Management contract; and (iii) competitive sealed bidding would not be practical or fiscally advantageous.

- 6. Current status of the project, including any outstanding issues including, but not limited to, final payment, claims, litigation, and warranties.
- E. If, after receiving approval from the Review Board, the public body abandons or otherwise delays the utilization of a planned design-build or construction management contract, as appropriate, the public body shall, within 30 days of such decision, provide written notification to the Review Board. The public body's notification shall include information relative to each of the following:
  - 1. The date of the public body's decision to abandon or otherwise delay utilization of its planned design-build or construction management contract, as appropriate;
  - 2. The reason or reasons for the public body's decision to abandon or otherwise delay utilization of its planned design-build or construction management contract, as appropriate; and in the event of a delay, as opposed to abandonment, the anticipated project re-activation date.
  - 3. In the event of a delay, as opposed to abandonment, the anticipated project reactivation date.

## APPENDICES

(The materials provided within these appendices are not a part of the Review Board's rules and regulations. Any form included within these appendices is current as of the date of these rules and regulations.)

#### APPENDIX A

#### §§ 2.2-2404 THROUGH 2.2-2406, and § 2.2-4308 OF THE CODE OF VIRGINIA, 1950, AS AMENDED

## § 2.2-2404 Design-Build/Construction Management Review Board; membership; terms; compensation; staff; seal.

- A. The Design-Build/Construction Management Review Board (the "Review Board") is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government.
- B. The Board shall consist of nine members to be appointed by the Governor as follows: the Director of the Division of Engineering and Buildings of the Department of General Services, or his designee; two Class A general contractors selected from a list recommended by the Associated General Contractors; one architect and one engineer selected from a list recommended by the Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects, and the Virginia Society of Professional Engineers; and four representatives of public bodies other than the Commonwealth selected from a list recommended by the Virginia Municipal League and the Virginia Association of Counties. Each such list, other than those recommended as representatives of public bodies, shall include the names of at least four persons who are experienced and actively engaged in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The list for representatives of public bodies shall include at least four persons who are experienced in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The Director of the Division of Engineering and Buildings or his designee shall be a nonvoting member of the Review Board, except in the event of a tie vote of the Review Board.
- C. After the original appointments, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive full terms, except the Director of the Division of Engineering and Buildings, who shall serve until a successor qualifies.
- D. The Review Board shall elect its chairman and vice-chairman from among its members. The Review Board shall meet monthly to conduct its business as required by § 2.2-2405. However, monthly meetings may be canceled by the chairman if there is no business before the Review Board. Five members shall constitute a quorum.
- E. Members of the Review Board shall receive no compensation for their services, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2805.

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- F. Such staff support as is necessary for the conduct of the Review Board's business shall be furnished by the Division of Engineering and Buildings of the Department of General Services pursuant to § 2.2-1134.
  - G. The Review Board shall adopt a seal by which it shall authenticate its proceedings.

#### § 2.2-2405. Powers and duties of the Design-Build/Construction Management Review Board.

- A. The Review Board shall have the power and duty to:
- 1. Review submissions by public bodies other than the Commonwealth of draft or adopted ordinances or resolutions to determine if the process for the selection, evaluation and award of a design-build or construction management contract is in compliance with the provisions of subdivision A. 1. of § 2.2-4308.
- 2. Determine if the public body has complied with the provisions of § 2.2-4308 relating to the retention of a licensed architect or engineer;
- 3. Review the findings and the basis of such findings submitted by the public body to determine if the public body has complied with the requirements of § 2.2-4308 and that the findings made by the public body pursuant to § 2.2-4308 are not unreasonable;
- 4. Develop guidelines relating to the documents and information to be reviewed by the Review Board;
- 5. Make post-project evaluations of construction projects procured by design-build or construction management contracts entered into by public bodies other than the Commonwealth, including cost and time savings, effectiveness of the selection, evaluation and award of such contracts, and the benefit to the public body; and
- 6. Report to the General Assembly and the Governor on or before December 1, 1999, and again on or before December 31, 2002, concerning the Review Board's evaluation of and findings regarding all design-build and construction management construction undertaken by public bodies other than the Commonwealth within the reporting year, and any recommendations relating to future use of design-build or construction management contracts by such public bodies.
- B. Review Board shall adopt regulations, as it deems appropriate, based on the substantive requirements of Chapter IX of the Capital Outlay Manual of the Commonwealth, for a two-step competitive negotiation process which shall be applied to design-build and construction management projects undertaken by public bodies other than the Commonwealth. For construction management projects, such regulations shall also include applicable provisions of the Required Construction Management Contract Terms of the Capital Outlay Manual.

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Such regulations shall also allow the Review Board to approve deviations from provisions of the Capital Outlay Manual that it deems appropriate. Regulations of the Review Board shall be adopted in accordance with the Administrative Process Act (§ 2.2-2400 et seq.).

## § 2.2-2406 Review by the Review Board for design-build or construction management approval; effect of disapproval; review of Review Board decision.

The Review Board shall conduct such inquiry it deems appropriate and may require the submission of additional documents or information by the public body, in a form prescribed by the Review Board, to determine if the public body has complied with the provisions of § 2.2-4308.

Within sixty days of the receipt of the request for review, the Review Board shall render a decision, unless a different timetable is agreed to by the public body. If the Review Board determines that the public body has complied with the provisions of § 2.2-4308 and the findings made by the public body pursuant to subdivision A. 2. of § 2.2-4308 are not unreasonable, the Review Board shall approve such use. If the Review Board determines that (i) the public body has not complied with the provisions of § 2.2-4308 or (ii) the findings made by the public body pursuant to subdivision A. 2. of § 2.2-4308 are unreasonable, it shall disapprove such use, and the public body shall not use a design-build or construction management contract to procure construction for the proposed project. If no decision is made by the Review Board within the sixty-day period or as otherwise agreed to by the public body, the proposed use of a design-build or construction management contract shall be deemed approved.

Any public body other than the Commonwealth which has been aggrieved by any action of the Review Board shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

## § 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) pursuant to § 2.2-2406.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

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- 1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Except as may otherwise be approved by the Review Board, such procedures for:
- a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the Review Board's regulations.
- b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the Review Board's regulations.
- 2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.
- B. Once approved by the Review Board in accordance with § 2.2-2406, the public body may procure a design-build or construction management contract for the specific construction project presented to the Review Board. Unless otherwise specified in the Request for Proposal, the contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the Request for Proposal.
- C. The public body shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.

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### APPENDIX B

## REQUEST FOR REVIEW CHECKLIST

Included (Yes/	<u>(No)</u>
	Evidence that the public body has in its employ or under contract an Architect or Professional Engineer to advise the public body regarding the use of a design-build or construction management contract, and to assist the public body with the preparation of the Request for Proposal.
	A certified copy of the ordinance or resolution adopting the public body's written procedures governing the selection, evaluation, and award of Design-Build and Construction Management contracts. If the ordinance or resolution has been previously submitted to and approved by the Review Board, a copy of the Review Board's letter of approval.
	If not a part of the adopted ordinance or resolution, a certified copy of public body's written procedures governing the selection, evaluation, and award of Design-Build and Construction Management contracts. If the written procedures have been previously submitted to and approved by the Review Board, a copy of the Review Board's letter of approval.
	The public body's findings that, as to the specific construction project under consideration:
	(i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract;
	(ii) there is a benefit to the public body by using a design-build or construction management contract; and
	(iii) competitive sealed bidding is not practical or fiscally advantageous. The findings shall include the information and data upon which the findings are based. Such information and data shall, as a minimum, include estimates for cost and time using the traditional design-build procedures, as compared with the proposed design-build or construction management procedures.
	A written narrative describing the criteria of the specific construction project under consideration in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications.
	Such additional documents or information, in the form prescribed by the Review Board, which has been requested by the Review Board.
	Such additional documents or information which the public body wishes to submit.
	Twelve (12) copies of each of the above.

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# APPENDIX C PROJECT EVALUATION FORMS

See enclosed forms.

# DESIGN - BID - BUILD DATA FORM ESTIMATE OF PROJECT SCHEDULE

Projec	t Name:	Date:	
Owner:		Ву:	
l VAC enter t	the information requested below to substantiate D-B/CNC 17-20-110 B.4, and submit with your request. Near the information requested below to substantiate D-B/CMC 17-20-320.D.3., and submit as required.)	he completion of the projec	t, on other copy of this fo
PRO.	JECT SCHEDULE		
Sche	dule of Events	Date	Duration
1.	Project Inception		N/A
2.	Completion of Design Program		
3.	A/E Design Notice to Proceed		
4.	A/E Completion of Schematic Design Phase		
5.	A/E Completion of Design Development Phase		
6.	A/E Completion of Construction Documents Phase		
7.	Advertisement for Bids		
8.	Bid Opening		
9.	Award of Construction Contract		
10.	Construction Notice to Proceed		
11.	Contractor Mobilization		
12.	Initial Certificate and Application for Payment		
13.	Substantial Completion		
14.	Final Completion		

NOTE: Duration equals the number of calendar days between event dates.

Final Payment and Project Close-Out

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#### DESIGN - BID - BUILD DATA FORM ESTIMATE OF PROJECT COST

Project Name:	 Date:
Owner:	 Ву:

(Enter the information requested below to substantiate D-B/CM Review Board Rules and Regulations Part IV, paragraph 1 VAC 17-20-110 B.4, and submit with your request. Near the completion of the project, on other copy of this form, enter the information requested below to substantiate D-B/CM Review Board Rules and Regulations Part VII, paragraph 1 VAC 17-20-320.D.2., and submit as required.)

	PROJECT	COST	
Building ( GSF)	\$		
Built-in Equipment	\$		
Subtotal		\$	
Sitework	\$		
Utilities	\$		
Subtotal		\$	
Total Estimated Construction Cost			\$
Design Programming Costs/Fees	\$		
A/E Fees	\$		
Subtotal		\$	
Other Costs			
Project Inspection	\$		
Furnishings and Movable Equipment	\$		
Other Costs (Identify)			
1.	\$		
2.	\$		
3.	\$		
4.	\$		
5.	\$		
Subtotal of Other Costs		\$	
Contingency		\$	
Estimated Total Project Cost			\$

NOTE: Please identify, on an attached sheet(s), any changes in project scope, size, or related costs for the second submittal of this form (i.e., near the time of project completion).

# INSTRUCTIONS FOR DESIGN-BUILD/CONSTRUCTION MANAGEMENT DATA FORMS #1 & #2 (D-B/CM PROJECT TIME, COST & AREA)

Project ?	Name: Date:
Owner:	By:
(Enter p	progress date(s) and provide additional information as required for each numbered item. "Forecast" means to enter any to date. If there are no changes, the items will remain as previously listed or forecast.)
1.	Design-Build or Construction Management Inception Date (i.e., decision to pursue D-B or CM process)
2.	Date Design-Build or Construction Management Approval Requested From the Design-Build/ Construction Management Review Board (submit Initial Project Description, Estimated Costs, Planned Project Schedule, and Total Gross Square Foot Area of Facility(ies) on Design-Build/Construction Management Data Form #1 and Form #2)
3.	Design-Build/Construction Management Review Board Presentation Date(s)
4.	Design-Build/Construction Management Review Board Approval Date
5.	Publication Date for Request For Qualifications
6.	Due Date for Potential Offerors' Qualification Statements
7.	Date Request for Proposals Issued to Pre-qualified Potential Offerors (submit Latest Forecast Project Date Schedule and List Actual Dates for Events Achieved on Design-Build/Construction Management Data Form #1; submit Latest Forecast Project Description, Estimated Costs, and Total Gross Square Foot Area of Facility(ies) on Design-Build/Construction Management Data Form #2)
8.	Due Date for Potential Offerors' Proposals
9.	Start Date of Competitive Negotiations
10.	Completion Date of Technical Negotiations (i.e., achievement of acceptable technical proposals) (if applicable)
11.	Opening Date of Sealed Cost Proposals (if applicable)
12.	Completion Date of Cost Negotiations (if applicable)
13.	Date of Initial Design-Build or Construction Management Contract (submit Latest Forecast Project Date Schedule and List Actual Dates for Events Achieved on Design-Build/Construction Management Data Form #1; submit Latest Forecast Project Description, Contract Costs, and Total Gross Square Foot Area of Facility(ies) on Design-Build/Construction Management Data Form #2)
14.	CM-GMP Agreement Date (if applicable)
15.	Completion Date for CM Pre-Construction Services (if applicable)
16.	Date of Notice to Proceed with Design-Build or Construction Management Construction Services
17.	Initial Date of On-Site Mobilization
18.	Date of Initial Application and Certification for Payment (submit copy of approved Schedule of Values)
19.	Date(s) of Substantial Completion (full or partial; submit copy of Certificate(s)). Provide number and briefly note scope of each by attachment.
20.	Date(s) of Certificate(s) of Occupancy (full or partial; submit copy of Certificate(s)). Provide number corresponding to number of the corresponding Certificate of Substantial Completion.

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Date of Final Completion (including completion of all project close-out requirements)

21.

# INSTRUCTIONS FOR DESIGN-BUILD/CONSTRUCTION MANAGEMENT DATA FORMS #1 & #2 (D-B/CM PROJECT TIME, COST & AREA)

-- continued --

Date of Final Payment (submit total dollar amount of Owner-initiated Change Orders; submit total Calendar Days of Extensions of the Contract Time; submit Actual Dates for Events Achieved on Design-Build/Construction Management Data Form #1; submit Actual (i.e., Constructed) Project Description, Final Costs, and Total Gross Square Foot Area of Facility(ies) on Design-Build/Construction Management Data Form #2)

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# DESIGN-BUILD/CONSTRUCTION MANAGEMENT DATA FORM #1 PROJECT SCHEDULE

Project Name:	Date:
Owner:	Ву:

Event		Original Schedule		Forecast (F) / Actual (A)	
Even		Date	Duration	Date	Duration
1.	Design-Build or Construction Management Inception Date		N/A		N/A
2.	Date D-B or CM Approval Requested From the D-B/CM Review Board				
3.	D-B/CM Review Board Presentation Date				
4.	D-B/CM Review Board Approval Date				
5.	Publication Date for Request for Qualifications				
6.	Due Date for Potential Offerors' Qualification Statements				
7.	Date Request for Proposals Issued to Pre-qualified Potential Offerors				
8.	Due Date for Potential Offerors' Proposals				
9.	Start Date of Competitive Negotiations	B- 11			
10.	Completion Date of Technical Negotiations				
11.	Opening Date of Sealed Cost Proposals (if applicable)				
12.	Completion Date of Cost Negotiations (if applicable)				
13.	Date of Initial Design-Build or Construction Management Contract				
14.	Construction Management GMP Agreement Date (if applicable)				
15.	Completion Date of Construction Management Pre- Construction Services (if applicable)				
16.	Date of Design-Build or Construction Management Construction Services Notice to Proceed				
17.	Initial Date of On-Site Mobilization				
18.	Date of Initial Application and Certification for Payment				
19.	Date(s) of Certificate(s) of Substantial Completion				
20.	Date(s) of Certificate(s) of Occupancy				
21.	Date of Final Construction Completion				
22.	Date of Final Construction Payment				
Total Subst	Project Duration (D/B-CM Review Board Approval Date to antial Completion)				

NOTE: Duration equals the number of calendar days between event dates.

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### DESIGN-BUILD/CONSTRUCTION MANAGEMENT DATA FORM #2 PROJECT DESCRIPTION, GROSS AREA, AND COST

Project Name:		Date:		
Owner:		Ву:		
PROJECT DESCRIPTION (List and update per D-B/CM Data Form Instru	ctions)			
PROJECT GROSS AREA (List and update per D-B/CM Data Form Instructions)	Initial Gross Area	Award Contract Area	Current Gross Area	

#### **PROJECT COST**

(List and update per D-B/CM Data Form Instructions)

(List and update per D-B/CM Data Form Instructions)						
Cost Category	Initial Budget	Award Contract Price	Current (C), Forecast (F), or Final Project Cost (FC)			
Construction Cost (Including Design-Build Design Fees, if applicable)						
Building	\$	\$	\$			
Built-in Equipment	\$	\$	\$			
Subtotal	\$	\$	\$			
Sitework	\$	\$	\$			
Utilities	\$	\$	\$			
Subtotal	\$	\$	\$			
Total Initial Construction Cost	\$	\$	\$			
Total Approved Change Orders	N/A	N/A	\$			
Total Final Construction Cost Construction Management Costs, if applicable	\$	\$	\$			
Pre-Construction Services	\$	\$	\$			
Construction Services	\$	\$	\$			
Other Costs						
Project Inspection	\$	\$	\$			
Furnishings and Movable Equipment	\$	\$	\$			
Other Costs (Identify)	\$	\$	\$			
Contingency	\$	\$	\$			
Subtotal	\$	\$	\$			
Total Project Cost	\$	\$	\$			

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